IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 322 OF 2003

Union of India ... Petitioner

Vs.

Mr. M.S. Kadam and another Respondents

Mr. Suresh Kumar along with Mr. O.A. Dube for Petitioenr.

Mr. N.M. Ganguli along with Mr. K.B. Poojari for Respondent to show cause.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 13, 2004
P.C. :

1. Challenge before this court is to the award of the Industrial Tribunal dated 19.8.2002 whereby it was held that he action of the Management of the Admiral Superintendent, Naval Dockyard, Mumbai, in imposing the punishment of Compulsory retirement on Mr. M.S. Kadam, ex-unskilled labour w.e.f. 29.09.1997 is not legal nor justified. Management is directed to reinstate workman in service in continuity and with full wages.

2. At the hearing of this petition, on behalf of the petitioner, their learned counsel contends that the order of the Tribunal suffers from an error apparent. The learned tribunal proceeded on the footing that as the Disciplinary authority chose to

differ from the findings of the Enquiry Officer an opportunity ought to have been given to the workman to have his say and only thereafter could the punishment be imposed. It did not consider the aspect that the disciplinary authority had given such an opportunity. It is further submitted that the findings by the learned Tribunal that as the Enquiry Officer has held the workman not guilty, the position in law would be as if there is no enquiry and the Management had failed to justify its action by leading fresh evidence is contrary to Law.

. On the other hand on behalf of the Respondent, their learned counsel points out from the material on record that it can amply be demonstrated that considering the misconduct alleged and evidence led the findings recorded are totally perverse and as such the punishment imposed cannot be sustained.

3. From the record it is clear that an enquiry was conducted and the enquiry officer submitted his report to the Disciplinary authority. The Disciplinary Authority on considering the report arrived at the conclusion that he cannot agree with the findings recorded by the Enquiry Officer and

found that on evidence produced, the charges against the respondent workman were proved. By letter of 16.7.1997 a copy of the said report of the Disciplinary Authority disagreeing with the findings of the enquiry officer were forwarded to the Respondent workman for his submissions. The workman made representation by letter dated 20.7.1997. It is only after that the punishment by way of removal from service was imposed. In the appeal preferred that was reduced to compulsory retirement.

. It is settled law in Industrial jurisprudence as well as service law that it is open to the Disciplinary authority to differ with the findings recorded by the Enquiry Officer. In such cases, the Disciplinary Authority then must make available to the delinquent workman an opportunity of giving his say. This has been complied with. Once that was complied with it was open to the disciplinary authority to impose punishment according to law. It cannot be said that this is case of no enquiry as has been held by the learned Industrial Tribunal. The issue of leading evidence before the Industrial Court only arises if the learned Tribunal had come to the conclusion and had

recorded a finding that the findings recorded by the Disciplinary Authority were perverse in which event considering the stage at which party had applied, the tribunal has jurisdiction to permit the employer to lead evidence. The learned tribunal did not record any findings on perversity. The question therefore, of the employer applying for leading evidence if in law is so entitled did not arise.

4. The finding therefore, of the learned tribunal will have to be set aside and the matter remanded back to the tribunal for deciding afresh including (1) recording a finding as to whether the enquiry is in violation of the principles of natural justice and or fair play or of any services rules and (2) whether the findings are perverse and thereafter to proceed according to law.

. Rule made absolute accordingly. Considering that the matter is of the year 1997, tribunal is requested to dispose of matter as expeditiously as possible.

(F.I. REBELLO,J.)